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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/799,882 | 03/15/2004 | Satoshi Aramaki | Q80300 | 8336 |
| 23373 | 7590 | 06/29/2006 | EXAMINER | |
| SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037 | | | FIDEI, DAVID | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3728 | |

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/799,882

Applicant(s)

ARAMAKI, SATOSHI

Examiner

David T. Fidei

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/15/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Drawings

1. Figures 3(L) and 3(R) should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the locking portions "on a corner" along with "a first hinge part" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are replete with vague, inferential language whose scope is not clear.

In claim 1 a lid part is provided on “an opening” of a container part where the lid opening is not defined. Also, interlocking portions are set forth “adjacent to corners” where neither term is defined. The scope of this language is not clear.

In claim 2 “a front face”, “a width”, “equal to about” and each “side face” are indefinite terms.

In claim 3, “the side faces” has no antecedent basis. The alternative language renders scope unclear. The language also appears redundant in the alternative in that the portions have been previously recited near corners.

In claim 4, it is not clear what defines a shape of being undercut-free.

In claims 5, and 17, said projection has a double antecedence. It is not clear what projection said projection refer to. Also, the projection of the present invention does not appear rectangular in any cross section thereof. If the cross section is to be taken relative to a certain reference point it is not clear from that in as much as claimed. Since the present invention is dependent upon a particular interpretation not commensurate with the scope of the language it would appear to be manifestly indefinite.

Claim 6, similar to claim 1, recites “an opening,” “a rear side”, “upper front corners” and “lower front corners” that are inferential, undefined terms in the context employed. Also, the scope of “substantially” near upper front or lower front corners is not known.

In claims 8 and 20, the term “its” is indefinite. A front corner portion seems imply one. Which is not commensurate with the scope of the disclosure. Also, it is not clear how a locking portion can be construed to be “on” a corner to the extent that on is mean at the exact location coinciding with the corners.

In claims 9 and 21, it is not clear what the modifier “continuously” adds to the downward.

Claims 11 and 23 introduces a “side portion” to “front portion” where neither term is defined. The implication of employing terms in this manner is that the side portion embodies the feature.

The same is evident in claims 12 and 24, wherein “a first hinge part” of said hinge implies that hinge of claim 6 includes such a part. Similarly, “an upper rear edge” and “a second hinge part” are also undefined limitation. In claim 24, third to last line “said upper read edge” has no antecedent basis and appears to be a spelling error.

In claims 13, 14, 18, 19 and 25, scope of “substantially equal to a width and a height of said second projection”, “substantially greater than heights of at least one of said first projection and said second projection” is not clear.

In claim 15, the scope of “an opening”, “a rear”, “a hinge” and “corners” is not clear. Does the recitation of corners imply that the device can not be circular? It would seem so. Also, claim 15 invokes 35 U.S.C. §112, ¶ 6. We have held that use of the word “means” creates a presumption that §112, ¶ 6 applies. *See York Prods., Inc. v. Cent. Tractor*, 99 F.3d 1568, 1574 [40 USPQ2d 1619] (Fed. Cir. 1996). Conversely, we have also held that the failure to use the word “means” creates a presumption that §112, ¶ 6 does not apply. *See Mas-Hamilton Group v. LaGard, Inc.*, 156 F.3d 1206, 1213 [48 USPQ2d 1010] (Fed. Cir. 1998). Applicant must identify every means plus function involved in the claims with a concise explanation of the subject matter defined, referring the to specification by page number and line, and to the drawings, and set for the structure, material, or acts described in the specification corresponding to each claimed function with referent to the specification by page and line number, and to the drawing. This is done to establish the prosecution history early in accordance with 37 CFR 41.37(c)(1)(v).

5. The examiner’s reviewing authority has stated that the second paragraph of 35 U.S.C. 112 requires a claim to particularly point out and distinctly claim the subject matter which applicant regards as his or her invention. Under *In re Hammack*, 166 USPQ 204 (CCPA 1970) and *In re Moore*, 169 USPQ 236 (CCPA 1971), claims must be analyzed to determine their metes and bounds so that it is clear from the claim language what subject matter the claims

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encompass. This analysis must be performed in light of the applicable prior art and the disclosure. The definiteness of the claims is important to allow others who wish to enter the market place to ascertain the boundaries of protection that are provided by the claims. *Ex parte Kristensen*, 10 USPQ 2d 1701, 1703 (PTO Bd. Pat. App. & Intf. 1989).

In defining the scope and content of the claims to overcome the aforementioned deficiencies, applicant should identify subject matter defined, referring the to specification by page number and line, and to the drawings, and set for the structure, material, or acts described in the specification corresponding to each of claimed terms.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-25 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,837,372. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present claims are broader than those previously patented. The previously patented subject

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matter would be encompassed by the present claims thereby extending the previously patented subject matter.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 3-8, 10-20 and 22-25 are rejected under 35 U.S.C. 102(a/b) as being anticipated by the Prior art of Figures 4 and 5. A case is disclosed in the prior art figures 4 and 5 comprising a containing part and a lid part with engagable interlocking portions 38a, 38b, 48a, 48b that are considered adjacent/substantially near/near to corners of the respective containing part and lid part. In the prior art of figure 4 the groove 38a defines a respective projection by the surfaces formed around the groove.

As to claim 3, it is noted the prior art cases of figures 4 and 5 can be turned around or orientated in any position desired. Therefore, it is a matter of convention as to what one considers the front, back side or middle areas.

As to claims 4, 7, 17 the surfaces of the interlocking portions are smooth and considered “undercut –free” with a rectangular cross-section.

As to claims 8, 10 and 11, a step is formed in the prior art of figure 4 by lip 31b. Also, the prior art of figure 5 has a stepped portion 44.

As to claims 12 and 24, the prior art of figure 5 discloses a hinge 43 in as much as is claimed and disclosed by the present invention.

As to claims 13, 14, 18, 19 and 25, since the projections fit together, the width and height are substantially the same. Also, since the projections are rectangular one dimension is manifestly greater than another. Depending upon what one considers a “height” or “width” of a projection one can be said to be greater than the other.

10. Claims 6, 9, 15 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese document JP 57-174320. A case is disclosed in figure 2 comprising a containing part and a lid part with engagable interlocking portions 5, 5' that are considered near to corners of the respective containing part and lid part. The groove 5 defines a respective projection by the surfaces formed around the groove.

11. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese document JP 61-141283. A case is disclosed in figure 1 comprising a containing part and a lid part with engagable interlocking portions 17, 18, 19 and 20 that are considered near to corners of the respective containing part and lid part. The grooves 19, 20 define a respective projection by the surfaces formed around the groove.

12. Claims 1, 2, 115, 16 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kalmanides (Patent no. 4,886,204). A case is disclosed in figure 1 comprising a containing part and a lid part with engagable interlocking portions 24, 26 that are considered on the corners of the respective containing part and lid part.

REPLY BY APPLICANT OR PATENT OWNER TO THIS OFFICE ACTION

13. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

If no amendments are made to claims as applicant or patent owner believes the claims are patentable without further modification, the reply must distinctly and specifically point out the supposed errors in the examiner's action and must respond to every ground of objection and rejection in the prior Office Action in the same vain as given above, 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

The examiner also points out, due to the change in practice as affecting final rejections, older decisions on questions of prematurity of final rejection or admission of subsequent amendments do not necessarily reflect present practice. "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)" (emphasis mine), see MPEP 706.07(a).

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'David T. Fidei', written in a cursive style.

David T. Fidei
Primary Examiner
Art Unit 3728

dtf
June 21, 2006